

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CARLOS HERRERA, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

MAKE-UP ART COSMETICS INC.,

Defendant.

Case No. 23-5245

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441(a)**

New York County Supreme Court  
Case Number 652467/2023

Complaint Filed: May 22, 2023

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that Defendant MAKE-UP ART COSMETICS INC.

(“Defendant”) hereby removes to this Court the state court action described below.

**I. FILING AND SERVICE OF THE COMPLAINT**

1. On May 22, 2023, Plaintiff CARLOS HERRERA (“Plaintiff”) filed a Complaint (the “Complaint”) in the Supreme Court of the State of New York, County of New York, thereby commencing a lawsuit, entitled *Carlos Herrera v. Make-up Art Cosmetics Inc.*, Supreme Court of the State of New York Case No. 652467/2023 (the “State Court Action”).

2. Defendant was served with a copy of the Complaint on June 2, 2023. Attached hereto as **Exhibit A** are true and correct copies of all process, pleadings, and orders served upon Defendant in the State Court Action. Defendant has not yet responded to the Complaint. There are no other named defendants.

**II. REMOVAL IS PROPER BECAUSE THIS COURT HAS FEDERAL QUESTION JURISDICTION**

3. Defendant is entitled to remove the State Court Action to this Court because it is a civil action brought in a state court which is being removed to the District Court for the District

where the action is pending, and over which this Court has original jurisdiction because the State Court Action asserts a claim arising under the laws of the United States. *See* 28 U.S.C. §§ 1331, 1441(a). It also asserts state law claims which fall under this Court's supplemental jurisdiction. *Id.* § 1367(a). Specifically, Plaintiff's Complaint asserts a claim for alleged violations of the Americans with Disabilities Act. 42 U.S.C. §§ 12102, 12181-82, 12188. Plaintiff also references Federal Rule of Civil 23(b)(2) regarding class certification.

### **III. THIS NOTICE OF REMOVAL IS TIMELY AND PROPERLY FILED**

4. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within 30 days after receipt by Defendant, through service or otherwise, of a copy of the Complaint in the State Court Action, which was the paper from which it could first be ascertained that the case is one which is or has become removable.

5. In compliance with 28 U.S.C. § 1446(d), Defendant will provide written notice of the filing of this Notice of Removal to all adverse parties and file a copy with the clerk of court in the State Court Action.

6. The undersigned counsel for Defendant has read the foregoing and signs the Notice of Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

### **IV. CONCLUSION**

Defendant respectfully requests that this action be removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

DATED: June 21, 2023

JEFFER MANGELS BUTLER & MITCHELL LLP

By:



---

MATTHEW S. KENEFICK (*Pro-Hac Vice Pending*)

JEFFER MANGELS BUTLER & MITCHELL  
LLP

Two Embarcadero Center, Fifth Floor

San Francisco, CA 94111

(415) 398-8080

Email: [msk@jmbm.com](mailto:msk@jmbm.com);

Attorneys for MAKE-UP ART COSMETICS  
INC.